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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/521,005
Filing Date: March 07, 2000
Appellant(s): PALLESEN ET AL.

Marc R. Ascolese
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 May 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-12, 14-24, and 26-36 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,992,940	Dworkin	2-1991
5,191,522	Bosco et al.	3-1993
5,787,453	Kennedy	7-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12, 14-24, and 26-36 are all rejected under 35 USC 103(a). This rejection is set forth in prior Office Action, paper number 11, and reproduced hereinbelow. The rejections which appear below substantially repeat the rejections made in the previous Office Action (paper number 11).

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8-9, 11-12, 14-18, 20-24, 26-30, and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dworkin (4,992,940) in view of Kennedy (5,787,453).

(A) As per claim 1, Dworkin discloses an automated system for determining the best price available for a product or service meeting a set of specifications comprising (col. 1 lines 53-60):

(a) a central processing unit (col. 3 line 62);

(b) memory of a computer storing a database, wherein the computer is programmed (col. 3 line 60 to col. 4 line 35);

(c) a terminal for communicating over a modem with the computer storing the database, wherein the computer accepts inputs from the user, searches the database, and displays the results to the user on the terminal, wherein the database contains information about products and/or services and the vendors who sell them, including a number which identifies the product, the lowest price available among all the vendors in the database, the average price for the product for all vendors in the database, and the list price for the product, wherein the entries for lowest price and the average price are calculated anew for each search by a user by searching the database for each vendor selling a particular item, and noting the price offered by each vendor (reads on "product rate expression"), and wherein shipping charges are also calculated for a product by

Art Unit: 3626

including in the database a detailed table giving shipping charges, as established by a common carrier, for every combination of shipping weights and distances, and then determining the shipping charges by consulting the stored table and calculating an amount based on distance and time and then displaying the shipping charge to the user (also reads on "product rate expression") (Fig. 1-2, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, and col. 8 lines 38-56) (It is noted that in Figure 1 the CPU and database are in communication with each other, and therefore this is considered to be a form of a "database interface");

(d) a database containing information about products and/or services and the vendors who sell them (reads on "product rate information cache"), including a number which identifies the product, the lowest price available among all the vendors in the database, the average price for the product for all vendors in the database, and the list price for the product (Fig. 1-2, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, and col. 8 lines 38-56);

(e) a program for calculating in the database the entries for lowest price and the average price for each search by a user by searching the database for each vendor selling a particular item, and noting the price offered by each vendor (reads on "product rate expression") and a program for calculating shipping for a product by including in the database a detailed table giving shipping charges, as established by a common carrier, for every combination of shipping weights and distances, and then determining the shipping charges by consulting the stored table and calculating an amount based on distance and time and then displaying the shipping charge to the user (also reads on

"product rate expression") (Fig. 1-2A-2B, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, col. 8 lines 38-56, col. 10 line 65 to col. 12 line 40);

(f) a terminal for displaying the products to the user, including the price of the product (Fig. 1, and 3-8, col. 11 lines 13-16); and

(g) wherein the database (reads on "cache") is stored in memory of the computer (col. 3 lines 60-68).

Based on the above passages cited from Dworkin, it is respectfully submitted that in order to calculate a price for a product Dworkin's system performs the following calculation, a form of "product rate expression":

(original price for the item) – (discounts based on quantity) + (shipping destination surcharges) + (shipping weight surcharges) = total price.

Dworkin then discloses providing the total price to a user (Fig. 1-2, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, col. 7 lines 35-54, and col. 8 lines 38-56). The total item or product price calculated from the aforementioned equation is considered to be "product rate information, including at least one product rate expression."

Dworkin does not expressly disclose the expression evaluation routine being operable to parse the product rate expression into at least one token, and operable to evaluate the at least one token to determine a product rate. Kennedy includes a system that parses formulas into operands and operators that are further evaluated to obtain a result (Kennedy; col. 3, lines 15-24 and col. 8, line 44 to col. 10, line 39). It would have

been obvious to one of ordinary skill in the art at the time of the invention to add the formula parser of Kennedy to the system of Dworkin with the motivation of providing users with very little grasp of computer programming methodologies a way to develop systems to calculate virtually anything of a mathematical nature once they can identify the source of data to be used, a target location for the result, and the fundamental mathematical operations needed to derive the result (Kennedy; col. 3, lines 30-35) and providing a system a system that allows a user to determine the best price available for a product or service meeting a set of specifications (Dworkin; col. 1 lines 5-60).

(B) As per claim 2, Dworkin discloses a database including a detailed table giving shipping charges as established by a common carrier, as established by a common carrier, for substantially every combination of shipping weights and distances. Dworkin is entirely silent as to whether this table is a multi-dimensional table of data. Kennedy discloses a SQL database having a number of dimensions (col. 6 lines 50-60). The skilled artisan would have found it obvious to modify the system of Dworkin to include the features of Kennedy with the motivation of enabling the user to efficiently access and analyze data stored in the database.

(C) As per claim 3, Dworkin discloses storing certain information about each user, such as name and address (col. 8 lines 9-25). Dworkin is entirely silent as to whether this table is a multi-dimensional table of data and is indexed. Kennedy discloses a SQL database having a number of dimensions (col. 6 lines 50-60). The skilled artisan would

Art Unit: 3626

have found it obvious to modify the system of Dworkin to include the features of Kennedy with the motivation of enabling the user to efficiently access and analyze data stored in the database. As per the recitation of "indexed by consumer information", it is respectfully submitted that a typical SQL database indexes any of the information stored in a database, and this would have been an obvious modification for the purpose of reducing the time to retrieve data and organizing the data within the database efficiently.

(E) As per claims 4-5, Kennedy discloses an operand representing a variable and an operation identifier representing an operation which is in the set consisting of mathematical and data transfer operations (reads on "logic or number operator") (Kennedy; col. 3, lines 15-24, col. 6 lines 13-26, col. 8, line 44 to col. 10, line 39, col. 14 lines 1-67). The motivation for combining Kennedy within Dworkin is given above in claim 1, and incorporated herein.

(F) As per claim 6, Kennedy teaches the use of Reverse Polish notation and other notations (Kennedy; col. 8, lines 54-60, Figures 5a-b). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the expressions taught collectively by Dworkin and Kennedy with the motivation of using a conventional mathematical field ordering notation that most readers would be familiar with (Kennedy; col. 8, lines 55-57).

Art Unit: 3626

(G) As per claims 8 and 18, Dworkin discloses a program for calculating in the database based on information inputted into the terminal, the entries for lowest price and the average price for each search by a user by searching the database for each vendor selling a particular item, and noting the price offered by each vendor (reads on "product rate expression") and a program for calculating shipping for a product by including in the database a detailed table giving shipping charges, as established by a common carrier, for every combination of shipping weights and distances, and then determining the shipping charges by consulting the stored table and calculating an amount based on distance and time and then displaying the shipping charge to the user (also reads on "product rate expression") (Fig. 1, 2A-2B, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, col. 8 lines 38-56, col. 10 line 65 to col. 12 line 40). However, Dworkin does not expressly disclose the program evaluating tokens to provide a product rate. Kennedy teaches the parsing of formulas into tokens and the evaluation of the tokens to provide a result (Kennedy; col. 3, lines 15-24 and col. 8, line 44 to col. 10, line 39). It would have been obvious to one of ordinary skill in the art at the time of the invention to add the feature of Kennedy to the system of Dworkin with the same motivation as applied to claim 1, and incorporated herein.

(H) As per claim 9, Dworkin discloses a terminal for receiving from the user at least one specification relating to the product, and then displaying products to the user, including

the price of the product based on searching a database of product information (Fig. 1, and 3-8, col. 10 line 65 to col. 11 line 33) and the user inputting the name and address of the user (reads on "consumer information") into the terminal (col. 8 lines 9-25).

As per the recitation of a "client application" and "client interface", the programming of a computer and means for displaying disclosed by Dworkin (col. 4 lines 30-35, col. 10 line 65 to col. 11 line 33) and are considered to be a form of "client application" and "client interface".

(I) As per claims 11-12, Dworkin discloses the computer communicating with the terminal by telephone lines or modem (col. 4 lines 3-12). It is respectfully submitted that using web server applications within a client-server architecture over a network is a typically used means for providing software applications to users, and the skilled artisan would have found web server applications within the system taught collectively by Dworkin and Kennedy with the motivation of allowing applications to be accessed from a remote location over a network and providing applications that are easily updateable.

(J) As per claim 14, Dworkin discloses the price of a product being a numeric value stored in the database (see Fig. 7, col. 6 lines 25-45). The remainder of claim 14 repeats the same limitations as claims 1 and 2, and is therefore rejected for the same reasons given for claim 14, and incorporated herein.

Art Unit: 3626

(K) Claim 15 differs from system claim 1 by reciting the step of "loading product information including at least one product rate expression from a database." As per this steps, Dworkin discloses updating the database including stored product information (col. 6 lines 25- 37 and col. 10 lines 45-55). The remainder of claim 15 repeats the same limitations as claims 1, 9, and 14, and is rejected for the same reasons given above in the rejections of those claims, and incorporated herein.

(L) Claim 16 repeats the same limitations as claims 2 and 14, and is rejected for the same reasons given above in the rejections of those claims, and incorporated herein.

(M) As per claim 17, Dworkin discloses storing the product information in a database table (col. 3 line 47 to col. 4 line 35 and col. 8 lines 38-56). It is respectfully submitted that storing information in tables is a form of database record.

(N) Claims 20-23 repeat the same limitations as claims 4-6, and are therefore rejected for the same reasons given for those claims, and incorporated herein.

(O) As per claim 24, Dworkin discloses a program for calculating in the database based on information inputted into the terminal, the entries for lowest price and the

Art Unit: 3626

average price for each search by a user by searching the database for each vendor selling a particular item, and noting the price offered by each vendor (reads on "product rate expression") and a program for calculating shipping for a product by including in the database a detailed table giving shipping charges, as established by a common carrier, for every combination of shipping weights and distances, and then determining the shipping charges by consulting the stored table and calculating an amount based on distance and time and then displaying the shipping charge to the user (also reads on "product rate expression") (Fig. 1, 2A-2B, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, col. 8 lines 38-56, col. 10 line 65 to col. 12 line 40). However, Dworkin does not expressly disclose the program evaluating tokens to provide a product rate. Kennedy teaches the parsing of formulas into tokens and the evaluation of the tokens to provide a result (Kennedy; col. 3, lines 15-24 and col. 8; line 44 to col. 10, line 39). It would have been obvious to one of ordinary skill in the art at the time of the invention to add the feature of Kennedy to the system of Dworkin with the same motivation as applied to claim 1, and incorporated herein. The remainder of claim 24 repeats the same limitations as claims 2 and 5, and is rejected for the same reasons given for those claims, and incorporated herein.

(P) Claim 26 repeats the same limitations as claim 1, and is therefore rejected for the same reasons given for claim 1, and incorporated herein.

(Q) Claims 27-30 and 32-36 repeat the subject matter of system claims 15-18 and 20-24 as a computer readable medium comprising instructions executable on a processor rather than as a set of apparatus elements. As the underlying elements of claims 15-18 and 20-24 have been shown to fully disclosed by the collective teachings of Dworkin and Kennedy in the above rejections of those claims, it is readily apparent that the system disclosed collectively by Dworkin and Kennedy includes the computer readable medium to perform the functions of the system. As such, these limitations are rejected for the same reasons given above for claims 15-18 and 20-24, and incorporated herein.

3. Claims 7, 10, 19, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dworkin (4,992,940) and Kennedy (5,787,453) as applied to claims 1, 15, and 27 above, and further in view of Bosco et al. (5,191,522)

(A) As per claims 7, 10, 19, and 31, the relevant teachings of Dworkin and Kennedy, and the motivation for their combination are as discussed above, and incorporated herein. Dworkin and Kennedy are deficient in that they do not disclose product rate information for insurance, wherein the insurance is at least one of home insurance, life insurance, health insurance, automobile insurance, and renter's insurance. However, this is only because Dworkin's exemplary embodiment is drawn to a different field, namely, the field of computer hardware products (col. 5 lines 16-27). Further, Dworkin

Art Unit: 3626

does suggest the use of his systems and methods to other products and services (col. 5 lines 28-34 and col. 10 lines 22-35). Moreover, integrated computer network systems that specifically handle insurance matters are well known in the art, as evidenced by Bosco. In particular, Bosco discloses providing coverage rate and premiums stored in a database to a sales subsystem (col. 29 line 48 to col. 30 line 11) for life, medical, and long term disability insurance (col. 1 lines 23-41). One having ordinary skill in the art at the time of the invention would have found it obvious to provide insurance rates as disclosed by Bosco within the system taught collectively by Dworkin and Kennedy with the motivation of providing users the power or control to access the information regarding insurance products offered by vendors so that a user may obtain the products most suited to his or her needs.

(11) *Response to Argument*

In the Appeal Brief filed 10 May 2004, Appellant makes the following arguments:

I. The combination of the Dworkin, Kennedy, and Bosco references taken alone or in combination neither teach nor suggest a product rate calculation system as recited in independent claim 1 and generally required by independent claims 15, 26, and 27:

(A) The Dworkin reference does not teach or suggest product rate information including at least one product rate expression.

(B) The Dworkin reference does not teach or suggest a product rate information cache storing product rate information.

(C) There is no suggestion or motivation to combine the Dworkin patent with the Kennedy patent.

I. With respect to the features of claims 1, 15, 26, and 27:

(A) In reference to Appellant's arguments with respect to the Dworkin reference, the Examiner respectfully submits that Appellant's statements appear to be misdescriptive of the full teachings of Dworkin. Appellant states that the Dworkin reference fails to teach or suggest product rate information including at least one product rate expression. However, then Appellant provides citations from the Dworkin reference (see column 8, lines 38-56 and discussed in the Brief at page 5, par. 1) reciting the following: "the system then determines the shipping charge by consulting its stored table and calculating the amount based on distance and total weight. The system can then display the shipping charge to the user immediately and add such charge to the bill." It appears to the Examiner that this citation provided by the Appellant means the following: $(\text{price of the product}) + (\text{shipping charge}) = (\text{total price})$. Furthermore, the Appellant states that a product rate expression is an expression that when evaluated yields a product rate. It appears that the Dworkin reference is yielding the price of a product with the aforementioned calculation. Thus, the Examiner respectfully submits that Dworkin teaches a form of product rate expression.

In addition, Appellant argues that the Dworkin reference neither teaches nor suggests the purported "expression" identified by the Examiner (see the Brief, top of page 6, and in the above rejection of claim 1):

(original price for the item) – (discounts based on quantity) + (shipping destination surcharges) + (shipping weight surcharges) = total price;

where Dworkin then discloses providing the total price to a user (Fig. 1-2, 6, col. 3 line 60 to col. 4 line 35, col. 5 lines 35-68, col. 6 lines 11-44 and lines 58-65, col. 7 lines 35-54, and col. 8 lines 38-56).

In response, the Examiner respectfully disagrees with the Appellant's statements. While the Examiner recognizes that the algorithm cited in the Office Action (paper number 15) may not be explicitly recited in the Dworkin patent, the Examiner respectfully submits that upon a careful reading of the Dworkin reference, it would be apparent to one skilled in the art that the total price for a product is calculated using a totality of different factors (i.e., shipping charges and quantity discounts) (see passage cited at the bottom of page 6 and top of page 7 of Appellant's Appeal Brief filed 14 May 2004) to arrive at a price for the product.

Furthermore, while Appellant argues that the applied prior art fails to teach a product rate expression, the Appellant never provides nor was the Examiner able to find a strict definition of the term "product rate expression" either in the claims or within the specification as originally filed. Therefore, the Examiner has given the claims their broadest reasonable interpretation (see MPEP 2111). In addition, although it is proper to use the specification to interpret what the appellant meant by a word or phrase

Art Unit: 3626

recited in the claim, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989). If Appellant had required a strict definition of the term, it had been suggested during prosecution that the Appellant amend the claims to better reflect what Appellant intended to claim as the invention (note page 5, second full paragraph of the Final Rejection mailed 3 November 2004, paper number 15).

In addition, Appellant argues that Dworkin fails to teach storing the product rate expression in a database. Because the Appellant failed to provide a strict definition of the term "product rate expression," the Examiner had given this language the broadest reasonable interpretation and had considered elements of the product rate expression, such as the shipping charge determined by consulting a stored table in the database and the average price of price and low price for a product (see the rejection of claim 1) to be a form of storing a "product rate expression" in a database.

(B) In reference to Appellant's arguments with respect to the Dworkin reference, the Examiner respectfully submits that Appellant's statements appear to be misdescriptive of the full teachings of Dworkin. Appellant states that the Dworkin reference fails to teach or suggest a product rate information cache storing product rate information. Further, Appellant states that the product rate information cache and database are distinct, and that Dworkin's database has no associated cache functionality.

Art Unit: 3626

In response, the Examiner respectfully submits that Appellant never claimed the product rate information cache and the database as distinct entities, and thus the Examiner is not required to interpret them as distinct. Furthermore, the Appellant never provided a strict definition of the term "product rate information cache" either in the claims or within the specification as originally filed. Therefore, the Examiner has given the claims their broadest reasonable interpretation (see MPEP 2111). In addition, although it is proper to use the specification to interpret what the appellant meant by a word or phrase recited in the claim, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989).

As such, in response to the Appellant's arguments regarding the use of temporary memories, the Examiner respectfully disagrees with Appellant's statements. The Examiner submits that Dworkin teaches a computer connected to a database containing information about products and/or services and the vendors who sell them, wherein the database is stored in the memory of the computer (col. 3 lines 60-69), wherein data is retrieved from a database and displayed (col. 11 lines 1-17). Although Dworkin does not explicitly recite "a cache", it is the position of the Examiner that one skilled in the art would have recognized that when retrieving data from a database, and then performing any operation on the data such as printing or viewing the data using a printer or computer screen, it would be required by the computer to store the data in the

memory of the computer, such as in a printer buffer, video memory, or the RAM of computer, after retrieving it from the database (i.e., a cache) in order to print or view the data.

(C) In reference to Appellant's arguments that there is no suggestion or motivation to combine the Dworkin patent with the Kennedy patent, the Examiner respectfully submits that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976).

Using this standard, the Examiner respectfully submits that she has at least satisfied the burden of presenting a *prima facie* case of obviousness, since she has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (see paper number 13). Note for example, the motivation explicitly stated at in paper number 13, pages 5-6, (i.e., providing users with very little grasp of computer programming methodologies a way to develop systems to calculate virtually anything of a mathematical nature once they can identify the source of data to be used, a target location for the result, and the fundamental mathematical operations needed to derive the result (Kennedy; col. 3, lines 30-35) and providing a system a system that allows a user to determine the best price available for a product or service meeting a set

Art Unit: 3626

of specifications (Dworkin; col. 1 lines 5-60)). Moreover, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specifically support that particular motivation and/or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. and Inter., 4/22/93).

Further, Appellant's allegation that the Examiner fails to (i) articulate what specific understanding or technological principle was within the knowledge of one of ordinary skill in the art to suggest the combination; and (ii) demonstrate how the references themselves teach such a combination, appears misleading. In particular, the Examiner explicitly pointed to specific principles that she considered to be the knowledge generally available to the ordinarily skill artisan. For example, note the Examiner's responses to Appellant's arguments regarding a "product rate information expression" and "product rate information cache."


In addition, each claim element recited by Appellant was meticulously matched with specific portions of the prior art that either directly taught or made obvious each


Art Unit: 3626

and every limitation recited within the claim. As such, the Examiner respectfully submits that the issue at hand is not a lack of a response from the Examiner with regard to the rationale for combining references (which is clearly unsupported by the prosecution history of the instant application.) Rather, what appears to be lacking is a pointing out by Appellant of some patentable distinction of the claimed invention over the citations and combinations manifest in the prior art of record, and reiterated by the Examiner.

For the above reasons, it is believed that the rejections should be sustained.

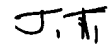
Respectfully submitted,



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